

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.313 OF 2007

The Commissioner of Income-tax
Aayakar Bhavan, Cantonment,
Aurangabad. ..Appellant.

V/s.

Siddheshwar Sahakari Sakhar
Karkhana Ltd., Maniknagar,
Billod, Dist. Aurangabad. ..Respondent.

Mr.B.M.Chatterjee with Mrs.P.P.Bhosale for appellant.

Mr.S.N.Inamdar with A.K.Jasani for respondent.

**CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.**

DATED : 17TH SEPTEMBER, 2007.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. This appeal is filed by Commissioner of Income Tax under section 260 A of the Income Tax Act, 1961 against the order of the ITAT dated 21/12/2004 relating to the assessment year 1995-96.

2. By consent, the appeal is admitted on the following reframed questions of law:-

1. Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2) (a) are not applicable to a co-operative Society ?
2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the additional payment over and

above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section 37(1) of the Income Tax Act, 1961 ?

3. Whether on the facts and in the circumstances of the case cane price / Khodki charges paid by the assessee was not "Bonus" within the meaning of 2(4) of the Maharashtra Co-op. Societies Act, 1960 and it was allowable as business expenditure ?
 4. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that Bakshish payment made by the assessee society was out of commercial expediency, whereas such payment is purely voluntary and sweet will of assessee and in addition to the H & T charges paid ?
 5. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to H & T contractors is in the nature of trade advances and thereby deleting the disallowance of interest part, even though such advance was made without any specific contractual obligation and out of borrowings on which assessee is giving huge interest to financial institutions ?
3. Counsel on both the sides agree that the first three questions of law are covered by the decision of this Court in the case of C.I.T. V/s. Manjara Shetkari Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No.318 of 2007 decided on 14th August, 2007 in favour of the assessee and against the revenue.
4. Counsel on both the sides agree that the question Nos.4 & 5 are answered against the revenue and in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax V/s. Samarth

Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No. 273 of 2007 decided on 17th September, 2007. Accordingly, all the questions are answered in favour of the assessee and against the revenue.

5. Appeal disposed of accordingly with no order as to costs.

(F.I.REBELLO, J.)

(J.P.DEVADHAR, J.)